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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-210922

**DATE:** March 30, 1984

**MATTER OF:** Internal Revenue Service--Limitation Under  
Fiscal Year 1983 Continuing Resolution

- DIGEST:**
1. The prohibition on using appropriated funds to impose or collect the excise tax on custom-made firearms, contained in section 105 of S. 2916 (97th Cong.), was not incorporated into the fiscal year 1983 continuing resolution and was therefore not applicable during that year. Section 101(a)(5) of the resolution provides that a condition or limitation, applicable by its terms to more than one appropriation account, that does not appear in both the House and Senate versions of an unenacted appropriation bill, is not incorporated into a continuing resolution unless it also appeared in the applicable appropriation act for the previous fiscal year. While the prohibition was contained in the 1982 supplemental appropriation act, we do not consider it the "applicable" act for purposes of this section.
  2. The limitation imposed on all Presidential appointees throughout the Government on using appropriated funds to renovate offices, contained in section 619 of S. 2916 (97th Cong.), was not incorporated into the fiscal year 1983 continuing resolution and was therefore not binding on the Internal Revenue Service. While there was a flat prohibition on renovating two specified IRS offices contained in the 1982 supplemental appropriations act which made it applicable as well to the 1982 final continuing resolution, the terms of the 1982 provision are very different from the terms of the 1983 provision in the Senate bill. Therefore, we cannot say that the same restriction appeared in an applicable appropriation act for 1982.
  3. Under the fiscal year 1983 continuing resolution, not more than \$40,400,000 of the funds appropriated for Taxpayer Service and Returns Processing were made available until expended for systems modernization initiatives. This corresponds to the amount of no-year authority made available in the House

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bill. While the overall appropriation contained in the House bill was higher than the amount in the Senate bill, section 116 of the resolution substituted designated amounts for the amounts that would have been otherwise provided for specific appropriation accounts under subsection 101(a) of the resolution. For other purposes, subsection 101(a) still applied to these accounts. Under paragraph 101(a)(3), when the House and Senate versions of an appropriation bill provide different authority, the project or activity is to be continued under the more restrictive authority. The House no-year authority was the more restrictive provision.

The Commissioner of the Internal Revenue Service (IRS) has requested our decision concerning whether certain spending restrictions or provisions, contained in appropriations bills unenacted by the 97th Congress, were made applicable to the IRS under Public Law 97-377, 96 Stat. 1830, the second continuing resolution for fiscal year 1983. The Commissioner's questions and our answers to them are as follows:

1. Was the prohibition on using IRS appropriations for the imposition or collection of excise taxes on custom-made firearms, contained in section 105 of S. 2916 (97th Cong.), applicable under the continuing resolution? We conclude that this prohibition was not incorporated into the resolution and was therefore not applicable.

2. Was the limitation on expenditures of funds for renovation of offices, contained in section 619 of S. 2916 (97th Cong.), applicable to the IRS under the continuing resolution? In our opinion, this limitation was not carried into the continuing resolution and therefore was not applicable to the IRS.

3. What portion of the funds appropriated for Taxpayer Service and Returns Processing by the continuing resolution was available until expended for systems modernization initiatives? We conclude that under the continuing resolution, up

\$40,400,000, the amount specified in H.R. 7158 (97th Cong.), was available until expended for systems modernization.<sup>1/</sup>?

Funding for IRS activities for fiscal year 1983 was provided by two continuing resolutions, Public Law 97-276 (covering the period through December 17, 1982) and Public Law 97-377 (covering the remainder of the fiscal year). The second of these resolutions, Public Law 97-377, is the subject of the Commissioner's inquiry.

Subsection 101(a) of the resolution appropriates such amounts as may be necessary to continue the projects or activities which would have been funded under the Treasury, Postal Service, and General Government Appropriation Act, 1983 (Treasury, Postal Service bill) had it been enacted into law. These appropriations are to be available to the extent and in the manner which would have been provided by the unenacted bill. 96 Stat. 1830.

Question 1: Was the prohibition in section 105 of S. 2916 applicable under the continuing resolution?

Section 105 of S. 2916, the Senate version of the Treasury, Postal Service bill, provides:

"That none of the funds appropriated by this act or any other act shall be used to impose or assess any tax due under subchapter D of chapter 32 of the Internal Revenue Code of 1954, as amended, sections 4161 and 4181, in all cases where less than fifty items are manufactured or produced per annum."

The House version of the bill, H.R. 7158, does not contain a similar provision.

Paragraph 101(a)(5) of the continuing resolution provides that no condition or limitation applicable to more than one appropriation account, which was not included in the applicable appropriation act for fiscal year 1982, is to be

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<sup>1/</sup> The Commissioner's letter posed another question concerning the applicability of section 117 of the continuing resolution to IRS collection of certain taxes from establishments in the State of North Dakota. We answered this question in a letter to Senator Mark Andrews dated June 27, 1983 (B-210922.1), which was also sent to IRS.

effective under the resolution unless it is contained in identical terms in both House and Senate versions of the appropriation bill. 96 Stat. 1831.

According to IRS, there are four separate operating appropriations which fund the taxing activity with which we are concerned. Therefore, the limitation contained in section 105 is applicable to more than one appropriation account. Further, as mentioned earlier, the condition or limitation on taxing custom-made firearms is contained only in the Senate version of the appropriation bill.<sup>2/</sup> It follows that under paragraph 101(a)(5) of the resolution, the limitation in the Senate bill was binding on IRS only if it was also contained in the applicable appropriation act for fiscal year 1982.

Except for a supplemental appropriations act passed late in the year, IRS was funded under continuing resolutions for all of fiscal year 1982. Public Law 97-51, 95 Stat. 958 (1981), as extended by Public Law 97-85, 95 Stat. 1098 (1981); and Public Law 97-92, 95 Stat. 1183 (1981), as extended by Public Law 97-161, 96 Stat. 22 (1982). As in the fiscal year 1983 resolution, the 1982 resolutions provided funding for activities which would have been funded under the unenacted Treasury, Postal Service bill to the extent and in the manner that would have been provided by the bill. Neither the House nor the Senate versions of the bill (H.R. 4121) contained a prohibition on expending appropriated funds for the imposition or assessment of the excise tax on small manufacturers of firearms. Thus, there was no such provision incorporated into the applicable continuing resolution for fiscal year 1982.

The Supplemental Appropriations Act, 1982, Pub. L. No. 95-257, September 10, 1982, did contain a nearly identical limitation on the taxing of custom-made firearms in its Salaries and Expenses appropriation for IRS. For the following reasons, however, we do not consider a supplemental appropriation act to be an "applicable appropriations act" within the meaning of paragraph 101(a)(5).

Subsection 101(a), which has been included in nearly identical language in continuing resolutions for many years,

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<sup>2/</sup> The resolution provides that if a bill has been reported to the House or Senate as of December 17, 1982, but has not yet been passed by that chamber, it shall be considered as having been passed. This proviso applies to the Senate version of the Treasury, Postal Service bill, S.2916.

must be read in its entirety in order to understand what the Congress might have meant in using the word "applicable." (There is no legislative history specifically on point.) Paragraph 101(a)(1) appropriates such sums as may be necessary to continue projects or activities for which appropriations would have been made under certain unenacted appropriation bills. Although the fiscal year 1983 resolution lists only the Treasury, Postal Service bill under this paragraph, in other years there usually have been several bills named. The bills are listed using their formal names--in this case, the "Treasury, Postal Service, and General Government Appropriation Act, 1983."

Paragraph 101(a)(2) states that the appropriations made by the subsection are available to the extent and in the manner which would have been available under the "pertinent appropriation Act." This term, "pertinent appropriation Act", obviously refers back to the bills listed in paragraph 101(a)(1).

There are three instances in which subsection 101(a) uses the term "applicable appropriation Act(s)." Paragraph 101(a)(3) states that, whenever a specific item is not included in both houses' versions of an unenacted bill specified in 101(a)(1), the project or activity is to be continued under the authority and conditions provided in "applicable appropriation Acts" for the previous fiscal year. Paragraph 101(a)(4) provides that whenever an unenacted bill specified in 101(a)(1) has not been passed by both Houses, the project or activity is to be continued also under the terms and conditions provided in "applicable appropriation Acts" for the previous year. The third instance is paragraph 101(a)(5), with which we are concerned, which speaks of a provision included in an unenacted bill specified in 101(a)(1) but which was not contained in "the applicable appropriation Act" for the previous fiscal year.

When we look at these three uses of the term together, it appears likely that the "applicable" appropriation act was meant to be the appropriation act in the previous year which had the same title and purpose as the appropriation bill specified in paragraph 101(a)(1). In other words, if we are concerned with the unenacted "Treasury, Postal Service, and General Government Appropriation Act, 1983," then the "applicable" appropriation act in the previous year is the "Treasury, Postal Service, and General Government Appropriation Act, 1982." In using the term, we think that the Congress intended activities to continue operating under the terms and conditions which were in effect under the regular

appropriation act for the entire previous fiscal year, rather than the terms or conditions which were included for a very brief period under a supplemental act passed late in the previous year.

We therefore conclude that the limitation in section 105 of S. 2916 was not incorporated into the fiscal year 1983 continuing resolution and was therefore not binding on IRS.

Question 2. Was the limitation contained in section 619 of S. 2916 applicable to IRS under the continuing resolution?

Section 619 of S. 2916 provides:

"During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to renovate, remodel, furnish, or redecorate the office of such department head, agency head, officer or employee, or to purchase furniture or make any improvements for any such office, unless such renovation, remodeling, furnishing or redecoration is expressly approved by the Committees on Appropriations of the House and Senate."

No similar provision was contained in H.R. 7158.

By its terms, section 619 applies to more than one appropriation account. Further, it is not contained in identical terms in both the House and Senate versions of the appropriation bill, since the House bill contains no restriction on renovation whatsoever. Therefore, under paragraph 101(a)(5) of the resolution, the limitation of section 619 is not applicable unless it was contained in the appropriation act for fiscal year 1982.

As we indicated above in discussing the firearms excise tax, except for a supplemental appropriations act, during fiscal year 1982 IRS was funded by a series of continuing resolutions which appropriated funds to the extent and in the manner that would have been provided by the unenacted Treasury, Postal Service bill. Neither the House nor the Senate versions of the 1982 bill contained the limitation on spending for office renovation.

There was, however, a specific prohibition on using funds for office renovation applicable only to IRS in Public Law 97-257, the Supplemental Appropriations Act, 1982. An administrative provision in Chapter XIII of that act provided:

"None of the funds provided in this Act or Public Law 97-161 shall be used for the redecoration, refurbishment, or remodeling of the office of the Commissioner of the Internal Revenue Service or the office of the Chief Counsel of the Internal Revenue Service." 96 Stat. 856. (Emphasis added.)

Unlike the case of the firearms tax restriction, discussed before, this limitation, by its terms, was made applicable not only to the supplemental, but also to the final continuing resolution for fiscal year 1982. It therefore was contained in the applicable appropriation act for fiscal year 1982. Nevertheless, we cannot conclude that the conditions of paragraph 101(a)(5) of the 1983 continuing resolution have been satisfied because of the significant differences in the scope of the restrictions on renovation contained in the 1982 and 1983 legislation.

The 1982 restriction applied only to renovation of the offices of two named officials of the IRS. The 1983 restriction would apply to all Presidential appointees, Government-wide. The 1982 legislation flatly prohibited any expenditure of appropriated funds for "redecorating, refurbishment, or remodeling" of the offices of the IRS Commissioner or his Chief Counsel. The 1983 provision permits expenditures of up to \$5,000 for each appointee's office, and possibly an increased amount if the House and Senate Committees on Appropriations approve. We must conclude that the provision which was included in the "applicable appropriation Act of 1982" is not the same as the provision in the

applicable appropriation Act for fiscal year 1983.<sup>3/</sup> Since the conditions of paragraph 101(a)(5) have not been met, it follows that the limitation in section 619 of S. 2916 was not incorporated into the fiscal year 1983 continuing resolution?

Question 3. What portion of the funds appropriated for Taxpayer Service and Returns Processing remains available until expended?

H.R. 7158 (97th Cong.) would have appropriated \$1,000,778,000 for Taxpayer Service and Returns Processing, of which not to exceed \$40,400,000 was to remain available until expended for systems modernization initiatives. S. 2916 (97th Cong.) would have appropriated \$967,000,000 for Taxpayer Service and Returns Processing, of which not to exceed \$50,200,000 was to remain available until expended for systems modernization initiatives.

Section 116 of the resolution provides:

"Notwithstanding any other provisions of this joint resolution, there is appropriated to the Department of the Treasury \* \* \* \$170,510,000 for 'Salaries and expenses', Internal Revenue Service; \$1,009,409,000 for 'Examinations and Appeals', Internal Revenue Service; \$1,000,778,000 for 'Taxpayer Service and Returns Processing', Internal Revenue Service \* \* \*." 96 Stat 1912. (Emphasis added.)

Despite its broad introductory language, we are of the opinion that section 116 does nothing more than substitute the designated amounts for the amounts that would have been provided for these specific accounts under subsection 101(a). For all purposes other than for determining the amounts of the

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<sup>3/</sup> According to the Senate report on S. 2916 (S. Rep. No. 547, 97th Cong., 2d. Sess. 5 (1982)), section 619 was motivated by some specific instances of what it termed "wasteful" refurbishing at IRS which had occurred 1 month earlier. The Report referred to the prohibition in the 1982 Supplemental Appropriation Act which it said "halted the extravagancies" at IRS. It determined, however, that a more generally applicable provision was necessary to "determine whether or not the taxpayers' money is being well-spent for these purposes."

appropriations, these accounts are still controlled by  
101(a).<sup>4/</sup>

The following considerations lead us to this conclusion: First, the accounts for which section 116 appropriates funds--"Salaries and Expenses", "Examinations and Appeals," and "Taxpayer Service and Returns Processing"--are the same as the accounts for which funds are provided by H.R. 7158 and S. 2916, the unenacted bills which are the objects of subsection 101(a). Second, for each account, section 116 only gives a dollar amount. It does not contain the terms and conditions for each account contained in H.R. 7158 and S. 2916.<sup>5/</sup> These or similar terms and conditions have been contained in the Treasury, Postal Service acts for years. In our opinion, it is highly unlikely that the Congress intended that these terms and conditions should not apply to the appropriations for fiscal year 1983. Third, there are certain general provisions in the appropriation bills, applying either specifically to the Department of the Treasury or to all agencies covered by the bills, which are made applicable by subsection 101(a), but which are not contained in section 116. Again, we do not think that the Congress intended to exempt the appropriation accounts designated in section 116 from the operation of these provisions.

Paragraph 101(a)(3) of the resolution states that whenever the amount which would have been available under the appropriation bill as passed by the House as of December 17, 1982, differs from the amount that would have been available under the bill as passed by the Senate as of the same date,<sup>6/</sup> then the pertinent project or activity shall be continued "under the lesser amount or the more restrictive authority".  
96 Stat. 1830.

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<sup>4/</sup> However, the "notwithstanding" language does overcome section 102 of the resolution which limits the duration of the authority granted by the resolution.

<sup>5/</sup> These terms and conditions include authorizations to purchase or lease automobiles, earmarking of funds for certain purposes, designated activities for which the funds are available, and similar provisions.

<sup>6/</sup> As explained in footnote 2, under the resolution, S. 2916 is deemed as having been passed by the Senate.

Section 116 specifies the amount appropriated for the account Taxpayer Service and Returns Processing. Therefore, we shall look to the House and Senate versions of the appropriation bill to determine "the more restrictive authority." In our opinion, H.R. 7158, which provides \$40,400,000 for systems modernization, is more restrictive than S. 2916, which provides \$50,200,000 for the same purpose. Since both the House and Senate versions directed that these funds are to be available until expended, we conclude that under the resolution, not more than \$40,400,000 was available on a no-year basis for systems modernization initiatives.

*for*   
Comptroller General  
of the United States